

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1, 2, 4, 7, 9, 12, 13, 14, 16 and 28-33 are drawn to a process of producing microspheres that contain active component within a polymer.

Group II, claims 17, 22, 25, 27, and 34 are drawn to an apparatus for producing microspheres that contain active component within a polymer.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack unity of invention *a posteriori* for the following reasons: the common technical feature in both groups is the microspheres that contain active component within a polymer. This microspheres cannot be a special technical feature under PCT Rule 13.2 because the element is shown in prior art. Patent belonging to Farbenfab Bayer Ag (GB 1297476) teaches process of preparing spherical particles (microgranulates) containing active material in a solution of a polymer (cellulose ester) and a solvent (glycol ether) (page 1, lines 77-87 and Abstract).

5. In a telephone call made to Attorney Frank Jordan on 12/17/2009 a message was left to request an oral election to the above restriction requirement. The phone call did not result in an election.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. CAMILLA POURBOHLOUL whose telephone number is (571)270-7744. The examiner can normally be reached on M-F 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SCP/

/James J. Seidleck/
Supervisory Patent Examiner, Art Unit 1796